FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 220

A. F. WHITNEY,
Petitioner,

vs.

T. M. MADDEN,
Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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STATEMENT OF CASE.

The decision by the Supreme Court of Illinois is reported in the official reports of that court (advance sheets) at 400 Ill. 185.

Upon the ground of *forum non conveniens*, the Superior Court of Cook County (Chicago), Illinois, refused to entertain and dismissed this libel action brought by Whitney, a resident of Cleveland, Ohio, against Madden, a resident of Virginia, Minnesota. The alleged libel was by a telegram which received no publication in Illinois.

The inconvenience which would have been caused to defendant and to the forum, if defendant were to defend the action in Illinois, was set forth by the affidavit of the defendant (R. 4). The plaintiff filed no counter or other affidavit and tendered no other showing upon the issue.

Availability of remedy to the plaintiff at the normal place of venue for such an action was conceded.

The affirmance by the Supreme Court of Illinois added one further state to the ten states which with the Federal courts and the courts of England have recognized the doctraine of *forum non conveniens.*

Answer to Petitioner's Point B.

We answer petitioner's argument that the Illinois courts applied the doctrine of *forum non conveniens* "contrary to the policy announced by this court in *Gulf Oil Corporation* v. *Gilbert,* 330 U. S. 501 * * *," by saying that the petitioner merely attempts to reargue the law of Illinois which the decision by the Supreme Court of Illinois settled.

Answer to Petitioner's Point A.

Petitioner also contends that the dismissal violated the privileges and immunities clause of the constitution.

Venue statutes frequently provide that a libel action shall be brought in the county where the defendant resides or in a county where the alleged libel was published. It can scarcely be contended that such a statute is unconstitutional, and yet the doctrine of *forum non conveniens* supplies the court with a discretionary power effectively to impose a venue provision of precisely similar scope.

Forum non conveniens involves no discrimination against nonresidents or against citizens of other states. Petitioner is incorrect in stating upon page 9 that "it is undisputed in this case that if the petitioner were a resident of Illinois he could bring this suit." The doctrine is applied equally to suits brought by residents. *Koster* v. *Lumbermen's Mutual Co.,* 330 U. S. 518.

Under the decisions of this court the proper application of *forum non conveniens* involves no violation of the privi-

leges and immunities clause. In *Gulf Oil Corporation* v. *Gilbert*, 330 U. S. 501, this court said (504):

> "* * * a state court 'may in appropriate cases apply the doctrine of *forum non conveniens.*' *Broderick* v. *Rosner*, 294 U. S. 629, 643; *Williams* v. *North Carolina*, 317 U. S. 287, 294, * * * This court has sustained state courts in a refusal to entertain a litigation between a nonresident and a foreign corporation or between two foreign corporations. *Douglas* v. *New York, N. H. & H. R. R.*, 279 U. S. 377; *Anglo-American Provision Co.* v. *Davis Provision Co. No. 1*, 191 U. S. 373 * * *."

There is scarcely conceivable a better example of an appropriate application of the doctrine of *forum non conveniens* then to a libel action between nonresidents when the alleged libel was not published in the state of the forum.

A lawsuit is something more than just playing a game. Whitney should not be able to exercise what he considers to be good strategy in selection of a forum when it will be inconvenient and expensive for Madden there to defend, and when by that strategy alone Whitney might be able to impose upon Madden more financial injury than any verdict, even in high-verdict Chicago, might be expected to cause.

Nor should Whitney be able to impose this suit upon the courts, the jurors, and the taxpayers of Chicago. As was said in *Hatfield* v. *Sisson*, 59 N. Y. S. 73, 74:

> "New York has slander suits of its own residents sufficient to occupy the time of its courts without inviting or encouraging litigation of that class of right belonging to other States."

The petition for writ of certiorari should be denied.

Respectfully submitted,

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